

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amended After Comments)

501 KAR 16:340. Electrocution protocol.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocol for execution by electrocution.

Section 1. Preliminary Steps. (1) The penitentiary shall have a minimum of three (3)~~[two (2)]~~ phones that may be used simultaneously~~[phone lines]~~ available for communication with the courts and counsel on the day of execution. The warden shall determine if necessary phones~~[phone lines]~~ are operational prior to the execution.

(2) The electrocution equipment shall be designed to deliver approximately five (5) to ten (10) amps depending upon the condemned person's physique at the designed voltage.

(3) The electrocution equipment shall be checked and tested in accordance with 501 KAR 16:320, Section 3(3), within forty-eight (48) hours of the time scheduled for an execution by electrocution.

(4) A sodium chloride solution shall be made by a member of the execution team within five (5) hours prior to the time scheduled for an execution by electrocution by the following:

(a) Approximately five (5) gallons of water at room temperature shall be placed in a container; and

(b) Up to 128 ounces of iodized table salt shall be slowly added to the water while continuously mixing until the water will not visibly absorb salt. Sufficient absorption is observed when the salt will not dissolve in the water and visibly collects at the bottom of the container.

(5) Natural sea sponges for the head and leg electrodes shall be prepared by soaking them in the sodium chloride solution until they are saturated.

(6) If the penitentiary does not have power when the execution is scheduled to commence, the generator for the execution building shall be started.

(7) The condemned person's head and one (1) leg shall be shaved on the day of execution.

(8) The warden shall order the condemned person escorted to the execution chamber and strapped in the chair.

(9) The warden shall order the viewing curtain opened.

(10) The warden shall announce the execution to the witnesses.

(11) The warden shall ask the condemned person if he wants to make a final statement. If a statement is made by the condemned person, it shall be limited to two (2) minutes. The witnesses shall be allowed to hear the condemned person's statement.

(12) The warden shall announce the final preparations for the execution to the witnesses.

(13) The viewing curtain shall be closed.

(14) The execution team members shall:

(a) Attach the chin strap to the condemned person;

(b) Attach the head gear to the condemned person;

(c) Attach the leg band to the condemned person;

- (d) Adjust the back board;
- (e) Attach the cables from the electrocution equipment to the head and leg electrodes with the nuts sufficiently tightened to ensure a firm connection;
- (f) Wipe any salt water released from the sponges from condemned person's head and leg; and
- (g) Secure the condemned person's leather face covering.
- (15) The warden shall make a visual check of connections and straps.
- (16) The execution team shall exit the execution chamber.
- (17) The viewing curtain shall be opened.
- (18) The warden shall:
 - (a) Announce the execution of the condemned person to the witnesses; and
 - (b) Pull the face covering over the condemned person's face.
- (19) All persons except the condemned person shall exit the execution chamber.
- (20) Counsel assigned by the cabinet, and counsel assigned by the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

Section 2. Execution. (1) The warden shall order the execution to proceed.

(2) The execution equipment shall be activated for a two (2) minute cycle. The cycle shall consist of:

- (a) Approximately 2,400 volts for a period of fifteen (15) seconds; and
- (b) Approximately 240 volts for the remainder of the two (2) minute cycle.
- (3) If the warden sees evidence of a malfunction, he shall press the stop button on the electrocution equipment to end the cycle.
- (4) At the end of the two (2) minute cycle:
 - (a) The viewing curtain shall be closed; and
 - (b) The warden shall observe the condemned person for signs of life for five minutes, which at a minimum shall include pulse and respiration.
- (5) If the warden observes signs of life during the five (5) minute observation period:
 - (a) The viewing curtain shall be opened; and
 - (b) The warden shall order the execution cycle stated in subsection (2) of this section be repeated.
- (6) If the warden observes signs of life again, the execution shall be stopped. The commissioner shall contact the Governor's Office and request that the execution be suspended.
- (7) If the warden does not observe signs of life:
 - (a) The coroner shall check the condemned person to declare death, which at a minimum, shall include pulse and pupils; and
 - (b) The physician shall certify the cause of death.

Section 3. Post Execution Steps. (1) The warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the warden's announcement.

(2) The witnesses shall be escorted out of the witness room.

Section 4. Stabilization Procedure. (1) Before an execution commences:

- (a) The warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and
- (b) A medical crash cart and defibrillator shall be located in the execution building **in close proximity to the execution chamber**.

(2) If at any time during the execution process the Governor grants a pardon or commutes

the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

- (a) The execution team shall stop the execution; and
- (b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

Section 5. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the warden.

(2) If the execution is in process:

- (a) The execution team shall stop the execution; and
- (b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in Section 4(1) of this administrative regulation.
- (3) The warden shall allow the condemned person to contact his attorney.
- (4) The warden shall notify the commissioner.
- (5) The commissioner shall contact the Governor's Office and request that the execution be suspended.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: April 10, 2018

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CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the protocol for conducting an execution by electrocution.

(b) The necessity of this administrative regulation: KRS Chapter 431.220 establishes electrocution as one of the methods of carrying out the death penalty. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the process for carrying out an execution by electrocution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the process for execution by electrocution, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a procedure for execution by electrocution in this Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment changes language about phones to match language changed in the lethal injection protocol.

(b) The necessity of the amendment to this administrative regulation: It maintains similar language for similar procedures in both protocols.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: It maintains similar language for similar procedures in both protocols.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Office of the Kentucky State Medical Examiner, Department of Public Advocacy, Attorney General's Office, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Kentucky Department of Fish and Wildlife, Kentucky National Guard, Eddyville Fire Department, the Lyon County Coroner, and the Lyon County Ambulance Service.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;

Kentucky State Police, \$3,625;

Office of the Kentucky State Medical Examiner, \$2,000;

Kentucky Department of Public Advocacy, \$34,463;

Kentucky Department of Fish and Wildlife, \$450;

Kentucky National Guard, \$18,975;

Lyon County Sheriff's Office, \$900;

Kuttawa Fire Department, volunteer agency with no fiscal impact;

Eddyville Fire Department, volunteer agency with no fiscal impact;

Lyon County Ambulance Service, \$1200;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department*

of Corrections, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. See approximate costs to conduct an execution in 4(b).

(b) On a continuing basis: See approximate costs to conduct an execution in 4(b).

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Biennial budget funds designated to the state agencies listed in 4(b) above. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, funds designated to them by the county.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Office of the Kentucky State Medical Examiner, Kentucky Department of Public Advocacy, Office of the Attorney General, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, and Lyon County Ambulance Service will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment does not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment does not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this

administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;

Kentucky State Police, \$3,625;

Office of the Kentucky State Medical Examiner, \$2,000;

Kentucky Department of Public Advocacy, \$34,463;

Kentucky Department of Fish and Wildlife, \$450;

Kentucky National Guard, \$18,975;

Lyon County Sheriff's Office, \$900;

Kuttawa Fire Department, volunteer agency with no fiscal impact;

Eddyville Fire Department, volunteer agency with no fiscal impact;

Lyon County Ambulance Service, \$1200;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: